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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom L. Hartley
Criminal District Attorney
Edinburg, Texas

0.1522
Modified by 0-1240

Dear Sir:

Opinion No. 0-1461

Re: The statutes do not authorize tax collectors to issue poll tax receipts on applications therefor made by mail, except where the poll tax has been assessed against the taxpayer and in response to it he mails to the collector a money order or bank check in payment of both poll tax and property tax.

We have your letter of September 15, 1939, requesting an opinion upon the following question:

"Can a taxpayer who does not reside in a city of 10,000 inhabitants mail to the tax collector of said county his sworn affidavit containing all information necessary for the issuance of a poll tax receipt, together with the money in payment therefor, and receive his poll tax receipt without having appeared in person or without having designated an agent in said affidavit as required by law?"

We quote verbatim Article 2961, Vernon's Civil Statutes of the State of Texas, which we believe controlling of the methods by which a party may apply for a poll tax receipt.

"If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by

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him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him."

Article 2963, Vernon's Civil Statutes of the State of Texas, provides that when the poll tax is paid by an agent, the tax receipt shall not be delivered to the agent, but shall be sent by mail to the taxpayer, or kept and delivered to the taxpayer in person by the tax collector.

We have considered the case of Wallis v. Williams, 110 S. W. 785, (1908 T. C. A. Galveston), to which you refer, as holding "The right of suffrage conferred by the Constitution does not depend upon the payment of his poll tax 'in person' by the voter." Upon an examination of this case we have concluded that while it is in line with several authorities holding that if a poll tax is issued irregularly it will not operate to disfranchise the voter, however, the principle is not to be construed, in our opinion, as authority for a tax collector to issue a poll tax other than as provided by statute. The court in this case said:

"The statute upon the subject directs that the voter shall pay the tax in person, or give a written order therefor; but it does not provide that a failure to obtain his receipt in the manner directed by the statute will disfranchise the voter."

The case of Parker v. Busby, et al, (T. C. A. Galveston, 1914), 170 S. W. 1042, was a mandamus proceeding to require the tax collector of Hardin County to issue a poll tax receipt both to parties who had tendered the tax by agents holding duly written authority and to parties who had made application for their poll tax receipts by mail. Note that it does not appear that the parties making application by mail did so pursuant to assessments against them.

"We think it is only necessary to add that the law does not provide for the payment by a taxpayer of his poll taxes through mail and that the plaintiffs * * * who sought to make payment and obtain their poll tax receipts in this way, have no right to

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compel the collector to issue receipts
to them * * *

From the foregoing it is our opinion that pursuant to Article 2961, an applicant for a poll tax receipt must necessarily furnish the collector the information necessary to fill out the blanks in the poll tax receipt, along with the money, either (1) in person or (2) by a duly authorized person authorized in writing to act as agent for him.

We now consider Article 2963 as it bears upon this question. It reads in part as follows:

"When in cases permitted by this Title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the Tax Collector.

Where a property taxpayer residing either within or without a city of ten thousand inhabitants or more, has a poll tax assessed against him or his wife or both, he may, at the same time that he pays his property tax by bank check or money order, also pay the poll tax of himself and wife, or either, and in the same way, and it shall be the duty of the Tax Collector in such cases, to mail such poll tax receipts, together with the property tax receipt to such property taxpayer. Exemption certificates shall be mailed in like manner, with the property tax receipt upon the payment of property taxes."

The first sentence undoubtedly refers to Article 2961, and requires that in instances where the poll tax is tendered by an agent, the receipt must be mailed to the tax payer. The remainder of the paragraph of said article deals, we believe, with a third method of tendering applications for poll taxes. Namely where a taxpayer "has a poll tax assessed against him or his wife or both, he may, at the same time that he pays his property tax by bank check or money order, also pay the poll tax of himself and wife, or either, * * *". We construe this measure to imply that the taxpayer may apply by mail for a poll tax receipt provided he has been assessed for the poll tax and

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tenders his bank check or money order in payment of said poll tax at the same time that he pays his property tax. It is certain that a taxpayer may pay his property tax by mail. He may by authority of the above statute also pay his poll tax in the same way, that is by mail, provided he complies with the other provisions of Article 2963 and pays his property tax in that manner and at the same time. Too, there is good reason for the exception, for in considering the purpose of the statutes to prevent fraudulent and improper issuance of poll tax receipts, such evils are for practical purposes avoided when the receipts are issued on applications received (with money order or bank check) pursuant to specific assessments. Only property owners may pay their poll taxes in this manner. Obviously persons illegally seeking the issuance of tax receipts meet with the practical difficulty, under this method, of having to pay at the same time a property tax, which of course they will not do except where paying their own. Further, in such instances the tax collector is under a duty "to mail such poll tax receipts, together with the property tax receipt to such property taxpayer." It would be a needless requirement for the collector to mail the receipts, if the taxpayer had tendered the tax in person. Undoubtedly the Legislature contemplates in such instances, a tender by mail. The taxpayer, it is to be noted, must, pursuant to Article 2965, tender all the information therein called for to enable the collector to make out a poll tax receipt.

At this point it is necessary to consider a former opinion of this department rendered on February 13, 1931, by Everett F. Johnson, Assistant Attorney General. Article 2963 was construed to provide that the tax collector may issue tax receipts in all instances of applications by mail. It reads in part as follows:

"While the foregoing article refers to a poll tax that has been assessed against a person, we do not think that an assessment is necessary in order to allow the payment thereof by mail."

The above stated opinion was directed primarily to "the real and only question involved is whether or not the tax collector can issue a 1930 voting poll tax receipt after January 31, 1931." In that instance the money for the poll tax had been directed to the tax collector before the final date of January 31, but the tax collector had failed to issue the receipt within or by that time. The opinion holds that inasmuch as the money and application for the poll tax receipt was received within the prescribed statutory time limit the tax col-

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lector was under a duty to issue a receipt. Necessarily involved in the question before the department at that time was also the one we are presently concerned with, namely, whether or not the application for the poll tax, having been made by mail, the tax collector was under a duty to issue the receipt.

The opinion concludes "the taxpayer has paid the poll tax furnished the tax collector with all the information required, prior to February 1, and in doing so, in our opinion, he has done all that the law requires of him in order to obtain a poll tax receipt." We agree with this former opinion insofar as it holds that a tax collector may issue a tax receipt following February 1, of any year provided he has received the application and money for the receipt previous to that date. However, with the conclusion that in all instances the application may be made by mail we are forced to differ.

Accordingly it is our opinion that Article 2961 authorizes a tax collector to issue poll tax receipts only upon application by the taxpayer in person or by his agent upon written authority and that Article 2963 authorizes the tax collector to issue poll tax receipts upon application made by mail provided the taxpayer in such instance has been assessed for the poll tax and tenders payment therefor at the same time that he pays his property tax, with bank check or money order.

(N)

Yours very truly

ATTORNEY GENERAL OF TEXAS

(Signed)

By

Hugh Q. Buck
Assistant

HQB:RS

APPROVED: November 7, 1939
Gerald C. Mann (Signed)
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY B..B.
CHAIRMAN